

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOSEPH JODY,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-19-502-F
)	
AUDRA HINES, et al.,)	
)	
Defendants.)	

ORDER

On June 13, 2019, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation, recommending plaintiff's application for leave to proceed in forma pauperis be denied and that his 42 U.S.C. § 1983 action be dismissed without prejudice unless plaintiff pays the \$400.00 filing fee in full within 21 days of any order adopting the Report and Recommendation. Doc. no. 6.

Presently, the court is in receipt of plaintiff's timely objection to the Report and Recommendation. Doc. no. 7. Plaintiff does not dispute Magistrate Judge Mitchell's finding that he has sufficient funds to prepay the \$400.00 filing fee for his § 1983 action since he has \$421.98 in his prison savings account. However, plaintiff represents that his prison savings account is all he "has to get started with upon his release in a couple [of years]." *Id.* at p. 1. He further requests that the court to permit him to "pay 10% out of his gang pay every month" to pay the \$400.00 filing fee. *Id.*

In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with the recommended ruling of Magistrate Judge Mitchell. Under 28 U.S.C. § 1915(a), a district court

“may authorize the commencement . . . of any suit [or] action . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets of such prisoner possesses that the person is unable to pay such fees or give security therefor.” To succeed on an application to proceed in forma pauperis, plaintiff must show two things: (1) a financial inability to pay the required filing fees; and (2) the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues he raises. *See, Lister v. Department of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (citing *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991)). As Magistrate Judge Mitchell found, plaintiff has \$421.98 in his prison savings account.¹ That amount suffices to prepay the \$400.00 filing fee. Consequently, plaintiff does not qualify to proceed in forma pauperis in this action. The court therefore agrees with Magistrate Judge Mitchell that plaintiff’s in forma pauperis application should be denied. *See, Lay v. Oklahoma Department of Corrections*, 746 Fed. Appx. 777, 779 (10th Cir. 2018) (district court did not abuse its discretion by denying leave to proceed in forma pauperis when plaintiff’s inmate-savings statement reflected a balance exceeding the filing fee).² The court further agrees that plaintiff’s § 1983 action should be dismissed without prejudice unless he pays the \$400.00 filing fee in full to the clerk of the court within 21 days. *See*, Rule 3.3(e), Local Civil Rules of the United States District Court for the Western District of Oklahoma.

Accordingly, United States Magistrate Judge Suzanne Mitchell’s Report and Recommendation, issued June 13, 2019 (doc. no. 6), is **ACCEPTED, ADOPTED**


¹ As Magistrate Judge Mitchell also noted, funds in a prison savings account are available for payment of a civil action filing fee. *See*, 57 O.S. 2011 § 549(A)(5).

² The unpublished *Lay* decision is cited as persuasive pursuant to 10th Cir. R. 32.1(A).

and **AFFIRMED**. Plaintiff's Application for Leave to Proceed in Forma Pauperis, filed June 12, 2019 (doc. no. 5), is **DENIED**.

The above-entitled action shall be dismissed without prejudice unless plaintiff pays the \$400.00 filing fee in full to the clerk of the court within 21 days of the date of this order.

IT IS SO ORDERED this 27th day of June, 2019.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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